

WETLANDS

NEW HAMPSHIRE WETLAND RESOURCES

New Hampshire has an estimated 400,000 to 600,000 acres of non-tidal wetlands and approximately 7,500 acres of tidal wetlands (6.7 percent to 10 percent of the State). The acreage estimate for non-tidal wetlands is based on two sources; 1) LANDSAT telemetry data which is limited in resolution to wetlands that are greater than two acres in size; and 2) soils mapping data that has been completed in seven of the ten counties. Mapping based on the digital LANDSAT imagery shows that the State has approximately 396,000 acres of wetlands that are greater than two acres in size. The soils mapping completed to date suggest that approximately 10 percent of the State is Wetland. It is estimated that New Hampshire still has 50 percent of its 18th Century tidal wetlands and about 90 percent of its 18th Century non-tidal wetlands.

A summary of wetlands lost over the past two years is shown in Table 1 below. The “Estimated Two Year Impact” column of the table includes those impacts that: 1) have been permitted; 2) are associated with identified violations; or 3) are estimated for unidentified violations. The unidentified violations are all probably small (several thousand square feet each), but for this table their cumulative impact is assumed to be equal to the cumulative impact of known violations (approximately 24 acres during the two year period). The Department has initiated a database to track impacts and mitigation, but the quality of that data is still untested, and is limited to permitting activities. The lower end of the range for the two year impact represents the information from that source plus a nominal 48 acres for known and unknown violations.

In addition to the creation and restoration estimated in Table 1, easements were placed on approximately 1550 acres as mitigation for impacts. Most of this is buffer to natural wetlands, or complexes of uplands and wetlands, and as such protects considerable functional value that would otherwise be vulnerable to development.

Table 1
Extent of Wetlands by Type

Wetland Type	Estimated Acreage	Estimated Two Year Impact	Estimated Two year creation/ restoration	Estimated 2 year net loss	Percent Change
Tidal	7500	8	more than 8	0	0%
Non-Tidal	400,000 - 600,000	200 - 225	91 - 120	80 - 134	<0.04%

The reduction in estimated overall loss for this biennium (<0.04%), compared to the 1998 estimated loss of <0.06%, is probably due as much to improved accounting as

to any change in the actual rates.

NEW HAMPSHIRE WETLANDS REGULATIONS

New Hampshire was one of the first states to regulate its non-tidal wetlands, and remains one of only 14 states that do so today. New Hampshire first passed a statute regulating impacts to tidal wetlands in 1967, and the law was expanded to include non-tidal wetlands and surface waters in 1969. RSA 482-A is more inclusive than Section 404 or the Federal Clean Water Act in that it addresses both dredge and fill, requires permits for all projects regardless of size, and has no special exemptions for agriculture or other uses. New Hampshire statute RSA 482-A gives the New Hampshire Department of Environmental Services (DES) authority to promulgate rules and regulate activities involving dredge, fill, or construction in any wetland or upland areas adjacent to state designated prime wetlands, as well as any surface water body, sand dune or tidal buffer zone in the state. The Wetlands Bureau of the DES Water Division is responsible for application review; enforcement activities and the issuance of permits, denials, orders, and other administrative paperwork. The Bureau maintains a web site at <http://www.des.state.nh.us/wetlands.htm> which includes weekly permit and denial decisions, rules, law, fact sheets, application forms, and other useful information. The Bureau has offices in Concord and Portsmouth. Operation of the Portsmouth Office is partially funded through the New Hampshire Coastal Program using federal funds.

Appeals of Department decisions go to a Wetlands Council who's membership includes the commissioners of the departments of Safety, Transportation, Environment Services and Resources and Economic Development; the directors of the Office Energy and Planning, and Fish and Game; and seven public members representing county conservation districts, local conservation commissions, elected municipal officials, the non-marine construction industry, the marine construction industry, a member of the Association of Natural Resource Scientists and general environmental protection and resource management interests. The public members are nominated by their respective interest groups and are appointed by the Governor and Council for three year terms. The council reviews the record developed below, and can remand decisions to the Department if it finds the Department acted in an unreasonable or unlawful manner.

The DES 401 certification program is linked to wetlands regulation by a requirement that Wetlands Bureau approval is required prior to certification for any project involving dredge, fill, or construction of a structure in wetlands or surface waters. Surface waters in wetlands are included in the State's definition of "Waters of the State", but water quality criteria have not been defined for wetlands.

The scope of New Hampshire wetlands regulation has evolved over the last 33 years, with several significant changes during the last dozen years. These changes reflect the response of the New Hampshire Legislature to an evolving understanding of both public and environmental needs in the State. In 1986 authorization was given to issue administrative fines. In 1989 the tidal buffer zone was expanded and clarified for easier determination in the field; a minimum impact notification process was added for forestry; authorization was given to issue administrative cease and desist orders and

administrative removal/restoration orders; and the Superior Court was provided with significant civil and criminal penalties and a strengthened removal/restoration authority.

In 1990 a graduated fee structure was developed that benefits both the applicant and the environment. The fees provide resources for a more timely review process, and the environment benefits from the financial encouragement to minimize impacts. In 1993, legislation enabled the former Wetlands Board to delegate minimum impact permitting to the Bureau, resulting in an expedited process. In 1995 a minimum impact notification process was added for recreational trail maintenance, and in 1996, legislation was passed which transferred the major responsibilities of the Wetlands Board to the DES Wetlands Bureau. In 2003 the legislature increased the above referenced graduated fee structure from \$0.04 per square foot of requested impact (no refund for denials or partial approvals) to \$0.10 per square foot requested. All fees go to DES for support of the Wetlands regulatory program.

INTERACTION WITH FEDERAL REGULATIONS

On June 1, 1992, the U.S. Army Corps of Engineers issued a New Hampshire State Programmatic General Permit (NHSPGP), and at the same time revoked most Nationwide Permits for use in the State of New Hampshire. The NHSPGP has broken new ground for reasonable and efficient environmental regulation. New Hampshire was the first state to have an inclusive state-wide state programmatic permit, and the unmitigated success of the process provides an excellent example of benefits accrued by increased cooperation between federal and state agencies. Less than 1 percent of the projects approved by the Wetlands Bureau require an individual permit from the Army Corps. The NHSPGP was reissued for another five years in June, 2002, and will next be up for renewal again in 2007.

The NHSPGP evolved from a recognition by the Army Corps, the U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency that the New Hampshire wetlands law, and the Wetlands Bureau's thorough review process, provided a sound basis for streamlining federal wetlands permitting. All projects are reviewed on an individual basis, and permits are issued in three categories: minimum impact (e.g. less than 3000 square feet impact), minor (e.g. less than 20,000 square feet of impact - about ½ acre), and major impact (e.g. over 20,000 square feet of impact). The NHSPGP handles each of these New Hampshire categories as follows:

- * All projects approved and classified as minimum impact by the Wetlands Bureau automatically fall under the NHSPGP, with no Corps action required. The Wetlands Bureau notifies applicants to this effect.
- * Minor projects approved by the Bureau are screened by the Army Corps and the other federal agencies for possible inclusion under the NHSPGP. The Army Corps notifies the applicant within 30 days if an individual permit is required. If the project meets the conditions of the NHSPGP, and the Army Corps does not intervene in 30 days, minor projects automatically are approved under the NHSPGP.
- * Major projects approved by the Bureau are screened by the federal

agencies, and the applicant is notified within 30 days whether he can proceed under the NHSPGP or whether he needs an individual Corps permit. This 30 day period is not an automatic approval for major projects; the applicant needs affirmative notification from the Corps before they can proceed.

The following categories of projects are excluded from the NHSPGP, and always need an individual federal permit:

- * More than three acres of fill.
- * New boating facilities including marinas, yacht clubs, boat clubs, public docks, etc.
- * Projects within the limits of a Corps navigation project.
- * Discharge of spoils in the ocean.
- * Improvement dredging in the lower Merrimack River, the Connecticut River, Lake Umbagog, or tidal waters.
- * Breakwaters extending more than 50 feet from the shoreline.
- * Projects adversely affecting a National Park, National Forest, National Wildlife Refuge, endangered species, or National Wild and Scenic river.
- * Projects of national concern (e.g. significant wetlands fills; work that could effect archeological sites).

The process benefits everyone. The applicant is relieved of a time-consuming parallel permitting processes, and is assured that they have a federal permit (the applicant was previously at risk if they assumed coverage by a Nationwide permit). The Corps has reduced its average turn-around time on general permit decisions to 12 days (for projects that are not minimum), from a pre-NHSPGP 45 to 60 days (minimum projects have automatic federal approval). Environmental protection is enhanced by the team effort because limited federal and state regulatory resources are freed to deal with the most significant problems.

DEVELOPMENT OF WETLAND WATER QUALITY STANDARDS

In accordance with RSA 485-A:2, XIV and Env-Ws 1702.46 and Env-Ws 1702.53, wetlands are considered surface waters of the state. As such, they are protected by the state's water quality standards. Current water quality standards, however, do not include numeric criteria specific for wetlands. The surface water quality regulations do, however, include the following narrative statement regarding wetlands criteria:

Env-Ws 1703.02 Wetlands Criteria.

- (a) Subject to (b) below, wetlands shall be subject to the criteria listed in this part.
- (b) Wherever the naturally occurring conditions of the wetlands differ from the criteria listed in these rules, the naturally occurring conditions shall be the applicable water quality criteria.